

PIERRO JACKSON §
v. § CIVIL ACTION NO. 6:09cv488
DIRECTOR, TDCJ-CID §

The Petitioner Pierro Jackson, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of prison disciplinary action taken against him. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Jackson complains of a disciplinary case which he received for use or possession of tobacco products, for which he received punishments of 30 days of recreation and commissary privileges, 15 days of cell restriction, reduction in classification status, and the loss of 30 days of good time credits. The Magistrate Judge ordered the Respondent to answer the petition, and the Respondent filed an answer saying that all of Jackson's claims were procedurally defaulted and that they lacked merit. Jackson filed a response to the answer.

After review of the pleadings, the Magistrate Judge issued a Report on August 4, 2010, recommending that the petition be dismissed. The Magistrate Judge concluded that Jackson's claims were procedurally defaulted because he did not properly raise them through the grievance procedures, and that even if Jackson's first grievance was properly filed, the only claim he raised in it was that he received ineffective assistance from his counsel substitute, which claim does not set

out a valid basis for federal habeas corpus relief. The Magistrate Judge therefore recommended that Jackson's claim be dismissed with prejudice and that Jackson be denied a certificate of appealability *sua sponte*.

Jackson did not file objections to the Report of the Magistrate Judge. Instead, on August 23, 2010, he filed a notice of appeal, specifically directing this notice to the Fifth Circuit Court of Appeals. In his notice of appeal, Jackson argues that no evidence was presented at the hearing, the time and date given for the alleged offense in the offense report was impossible because the charging officer was in another part of the unit at that time and date, he was not allowed to call witnesses, a grievance which he filed was never processed, and he has exhausted his administrative remedies.

Even construing Jackson's notice of appeal as objections to the Report, it is clear that these objections lack merit. As the Magistrate Judge carefully explained in the Report, Jackson did not exhaust his administrative remedies on his claims, rendering them procedurally defaulted. Even if Jackson's first grievance, which he says was improperly rejected, is considered, this grievance only exhausted Jackson's ineffective assistance claim, which the Magistrate Judge properly determined did not set out a basis for federal habeas corpus relief.

The Court has conducted a careful *de novo* review of the pleadings in this cause, the Report of the Magistrate Judge, and the Petitioner's objections thereto, as contained in his notice of appeal. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Pierro Jackson is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 20th day of September, 2010.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**